



Reasons for decision

Robert Ford,

complainant,

and

International Longshore and Warehouse Union,
Local 502,

respondent.

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May 15, 2013

The Canada Industrial Relations Board (the Board) was composed of Mr. William G. McMurray, Vice-Chairperson, and Messrs. John Bowman and André Lecavalier, Members.

Parties' Representatives of Record

Ms. Teresa Ford, for Mr. Robert Ford;

Mr. Bruce A. Laughton, counsel, for the International Longshore and Warehouse Union, Local 502.

These reasons for decision were written by Mr. William G. McMurray, Vice-Chairperson.

I. Nature of the Complaint

[1] On February 4, 2013, Mr. Robert Ford (the complainant) filed a complaint with the Board. He alleges that his union, the International Longshore and Warehouse Union, Local 502 (ILWU or the union), has violated section 110(1) of the *Canada Labour Code (Part I*

Industrial Relations) (the *Code*). He says the union has failed to comply with his written request, made in November 2012, for copies of financial statements back to 2009. More specifically, by letter dated November 6, 2012, Mr. Ford had requested the union to produce copies of a number of documents including "the full forensic accounting from 2009 to date, as per section 110 of the *Canada Labour Code*".

[2] The union admits that it has not disclosed its forensic accounting to him but denies that it has violated the *Code*. During the course of these proceedings, the accounting firm retained by the union completed the audited financial statement for 2012 and sent a copy to the union; the union, in turn, sent a copy to Mr. Ford and to the Board.

[3] For the reasons that follow, the Board dismisses the complaint. The full forensic accounting the complainant seeks is not a financial statement within the scope of section 110 of the *Code*. There are also problems with the timing of part of his request to the union. The timing issue under section 110 of the *Code* is one that has apparently not previously arisen before this Board or its predecessor.

II. Pleadings

[4] The complaint is set out in a letter dated January 17, 2013 which Mr. Ford filed with the Board on February 4, 2013. As documents in support of the complaint, Mr. Ford filed copies of two previous letters he wrote to the president of the union. The first is a letter dated November 6, 2012 asking the union to produce a number of documents and things. It is useful to reproduce the list of things from that letter:

1. Confirmation that the charge has only been laid by ["D. B."] and no others, and the particulars of the charge;
2. Particulars of my suspension including effective date and the provisions under which it was done;
3. **the full forensic accounting from 2009 to date, as per section 110 of the *Canada Labour Code*;**
4. copy of the forensic auditor's recommendations "for internal control", mentioned in the October, 2012 local meeting;
5. copies of all receipts and deposits for the account in question;
6. copies of all policies or decisions made by the local on how the finances of the local are to be dealt with;
7. copies of the Trustee's Reports from 2009 to date;
8. list of the standard pay rates for all officers and executive members of local 502;

9. all relevant documents in both electronic and hard copies, including emails regarding this matter;
10. copies of any documents or correspondence between the Union and the employer regarding this matter, including any and all electronic correspondence;
11. notes of any interviews or reports, conducted by the local or on behalf of the local, in the investigation of this matter;
12. cell phone records for the following numbers (604) [xxx-xxxx] and (604) [xxx-xxxx] between August 1 and 31, 2012;
13. particulars of directions and Instructions given to the Executive and the officers of ILWU local 502, regarding this matter; and
14. minutes of local meetings, executive meetings, and special meetings from 2009 to date.

(emphasis added)

[5] The only matter of direct interest to this complaint is his item number three: "the full forensic accounting from 2009 to date, as per section 110 of the *Canada Labour Code*". There is no request in that letter for a financial statement *per se*.

[6] The complainant was requesting copies of these documents and things to prepare for a November 13, 2012 meeting of the union's Grievance and Credentials Committee to which he was directed to appear. Mr. Ford also provided the Board with a copy of his subsequent letter dated November 21, 2012, to the president of the union, in which he reiterated his November 6 request.

[7] On February 14, 2013, the union filed its response to the complaint. In that response, the union indicated that it did not have audited financial statements for the years 2009, 2010, 2011 and 2012. It said, however, that it had taken steps to obtain an audited financial statement for the year 2012, including a comparator for the year 2011. The union undertook to provide a copy of that audited financial statement to the complainant upon receipt. The union also pointed out that in its view, the forensic accounting requested by the complainant was not a financial statement within the meaning of section 110 of the *Code*. The union admitted that it is in possession of a forensic accounting and that it had been prepared specifically for the purpose of outstanding civil litigation brought by the union against Mr. Ford and others. It denied any breach of the *Code*.

[8] By letter dated February 22, 2013, Mr. Ford filed his reply. His reply also makes direct reference to the civil litigation commenced by the union against him. In fact, he points out that it has now been approximately 5 to 6 months since the civil action began. He is of the view that the information he requested the union to provide should now be available, given the time that has elapsed.

[9] By letter dated April 16, 2013, the union provided the Board and Mr. Ford with a copy of the "Combined Financial Statements of ILWU Local 502 for the year ended 31 December 2012". These statements were prepared by a firm of chartered accountants in Vancouver, British Columbia. They included audited results for 2012 and a comparator for the year 2011.

III. Law

[10] The *Code* provides a member of a union the right to a copy of a financial statement of the union's affairs for the most current financial year. It imposes a corresponding duty on a union to provide a copy of that statement to a member, upon request. Section 110 of the *Code* provides:

110. (1) Every trade union and every employers' organization shall, forthwith on the request of any of its members, provide the member, free of charge, with **a copy of a financial statement of its affairs to the end of the last fiscal year**, certified to be a true copy by its president and treasurer or by its president and any other officer responsible for the handling and administration of its funds.

(2) Any financial statement provided under subsection (1) shall contain information in sufficient detail to disclose accurately the financial condition and operations of the trade union or employers' organization for the fiscal year for which it was prepared.

(3) The Board, on the complaint of any member of a trade union or employers' organization that it has failed to comply with subsection (1), may make an order requiring the trade union or employers' organization to file with the Board, within the time set out in the order, a statement in such form and with such particulars as the Board may determine.

(4) The Board may make an order requiring a trade union or employers' organization to provide a copy of a statement filed under subsection (3) to such members of the trade union or employers' organization as the Board in its discretion directs.

(emphasis added)

[11] It appears that section 110 has not often been brought to the attention of this Board. The previous Board dealt with it in decisions released in 1985 and 1986. Both of those decisions primarily address the same issue, namely, what is "a financial statement of its affairs" and how much detail must it provide.

[12] In the *Fraser* decision, the Canada Labour Relations Board (CLRB) wrote:

The requirement for trade unions and employers' organizations to provide information about their financial affairs to their members upon demand first appeared in the *Code* in 1978. Since then the provisions of section 199.1 [now section 110] have prompted few complaints and, on none of those occasions has the Board expressed its views either on the section itself or the standards to be met.

The question before the Board in this case is whether the financial statements provided to the complainant contained information in sufficient detail to accurately disclose the financial operation of CALFA for the fiscal years for which they were prepared. We see no need to reproduce the financial statements in these reasons; we have examined them thoroughly and believe that they meet with the spirit and intent of section 199.1. In so finding, we have considered the opinion expressed by the Ontario Labour Relations Board in **Murray G. Strong**, [1981] OLRB Rep. June 901, where it found that financial statements required to be furnished under its legislation need not set forth the minutiae of detail of the source and origin of every cent that is received and disbursed. We agree with the Ontario Board's view that a financial statement is simply a statement of net assets and summary of income and expenses of a particular operating entity. Section 199.1 creates the obligation of providing such a statement. One prepared by a reputable accounting firm clearly satisfies the minimum standards required under the *Code*. Anything further in the way of supporting details or reasons justifying expenditures are matters to be dealt with internally through the union's constitution or by-laws, not by way of the *Code*. The Board notes that the complainant has a right to pursue her demands under CALFA's constitution before CALFA's financial committee. This is the route she must take. The complaint under section 199.1 is dismissed.

(*Fraser* (1985), 62 di 218; and 12 CLRBR (NS) 282 (CLRB no. 535), page 223)

[13] From the above quotation we note, especially, the sentence that states "a financial statement is simply a statement of net assets and a summary of income and expenses of a particular operating entity" and the sentence that states "One prepared by a reputable accounting firm clearly satisfies the minimum standards required under the *Code*."

[14] In *Latrémouille*, the CLRB confirmed:

The obligation that Parliament imposed on trade unions or employers' organizations under section 199.1 can be defined as follow:

1. There is no automatic requirement to provide each member annually with a financial statement. The trade union or the employers' organization must comply only on request. The Board would add in this regard that it knows that most of the major unions in any case provide a financial statement to all their members as a matter of course.
2. The copy of this financial statement must be provided free of charge.
3. It must be certified to be a true copy by the president and the treasurer or by the president and any other officer responsible for the handing and administration of the union's funds.
4. This financial statement must be sufficiently detailed to disclose accurately the financial condition and operations of the trade union or employers' organization.

As the Board said at pages 223; and 287 of **Mary Fraser, supra**, the financial statement required to be furnished by the *Code* is simply a statement of assets and liabilities and a summary of income and expenses and, where this statement has been prepared by a reputable accounting firm, it contains these items and, in the Board's opinion, meets the requirements of section 199.1 of the *Code*.

(*Latrémouille* (1986), 64 di 12; and 87 CLLC 16,030 (CLRB no. 551), page 15)

[15] In both of the above cases, the member was asking the union to provide a copy of a current financial statement. It appears that, in neither case, was the union member asking the union to provide a copy of a financial statement for a previous financial year or years.

IV. Findings

[16] Mr. Ford was, at all material times, a member of the union. Both parties to this complaint acknowledge that Mr. Ford and his union are currently engaged in civil litigation in the courts in the province of British Columbia. That litigation began prior to Mr. Ford's November letter to the union requesting production of a copy of the forensic accounting.

[17] By letter dated November 6, 2012, Mr. Ford requested the union to provide him with, among other things, "a full forensic accounting from 2009 to date". Of note, the Board finds that nowhere in that letter did Mr. Ford request the union to provide him with a financial statement *per se*.

[18] The Board finds that Mr. Ford filed his complaint with this Board to obtain a copy of the "full forensic accounting from 2009 to date". That is a document which the union specifically obtained for the purpose of advancing the civil action it brought against Mr. Ford. By extension, he is trying to use a complaint to this Board as a means to obtain production of that full forensic accounting in the civil action in the court.

[19] It is also clear from the complaint that Mr. Ford believes that the forensic accounting obtained by the union in support of its legal action against him is a financial statement within the meaning of section 110(1) of the *Code*.

[20] There is no dispute between the parties that Mr. Ford was, for many years, the Secretary-Treasurer of the union local, a position from which he resigned in August 2012.

[21] The Board finds that the union did, on or about April 16, 2013, provide Mr. Ford with a complete copy of the Combined Financial Statements of ILWU Local 502 for the year ended 31 December 2012, prepared by a firm of chartered accountants in Vancouver, British Columbia. Those statements satisfy the substantive requirements set out at section 110(2) of the *Code*; those statements "contain information in sufficient detail to disclose accurately the financial condition and operations of the trade union or employers' organization for the fiscal year for which [they were] prepared", namely 2012 with a comparator for 2011.

[22] It is clear from the excerpt reproduced above from the CLRB decision in *Fraser, supra*, that a financial statement prepared by reputable accounting firm "clearly satisfies the minimum standards required under the *Code*". The Board finds that the financial statements that the union produced to the complainant under cover of the union's letter dated April 16, 2013 were prepared by a reputable accounting firm.

[23] The Board also finds that the financial statements produced do not comply with one of the formal requirements of section 110(1) of the *Code*; that is, on their face, the statements do not yet appear to be "certified to be a true copy by its president and treasurer or by its president and any other officer responsible for the handling and administration of its funds". Since Mr. Ford's objective in filing the complaint was to obtain a copy of a specific forensic accounting for 2009 to date, the fact that the general financial statements disclosed to him are lacking in a formal requirement is of no practical consequence to the determination of this complaint.

V. Analysis and Decision

[24] Section 16.1 of the *Code* provides that the Board may decide any matter before it without holding an oral hearing. Having reviewed all of the material on file, the Board is satisfied that the documentation before it is sufficient for it to determine this complaint without an oral hearing.

A. Primary Issue—the Scope of the Request for Production of a Financial Statement

[25] The first issue before the Board in this complaint is whether the full forensic accounting from 2009 to date is a financial statement within the scope of section 110 of the *Code*. In our view, it is not.

[26] The union clearly has a duty under section 110 of the *Code* to provide Mr. Ford, upon appropriate request, with a financial statement of its affairs. The Board notes that the union effectively did so on April 16, 2013. That said, based on the jurisprudence previously cited in these reasons, the “full forensic accounting from 2009 to date” he is asking the union to disclose to him is clearly not a matter within the scope of section 110 of the *Code*. What he is asking the union to disclose is more than “simply a statement of net assets and a summary of income and expenses of a particular operating entity”. It is also more than a union is required to produce pursuant to section 110(2) of the *Code*. The general obligation that section 110 of the *Code* imposes on the union to disclose a general financial statement does not address or encompass the disclosure of a specific forensic accounting.

[27] The Board also notes that both parties acknowledge that the full forensic accounting is part of a proceeding in the civil courts in which they are both involved. This Board is not, of course, the forum in which to seek production of documents or other information that may be relevant to a civil action. That is a matter for the rules of procedure and the jurisdiction of the civil courts. The general disclosure obligation under the *Code* is not properly a tool to be used as part of a specific legal action in the courts.

[28] It is significant to note that the quotation reproduced above from the *Fraser, supra*, case goes on to say “anything further in the way of supporting details or reasons justifying expenditures are matters to be dealt with internally through the union’s constitution or by-laws, not by way of the *Code*”. The Board agrees with that statement. The full forensic accounting that the complainant requested the union to produce in his letter dated November 6, 2012 goes far beyond the type of financial statement referred to at section 110(1) of the *Code*. Stated another way, under section 110(1) of the *Code*, a member of a trade union does not have standing before this Board to request production of a full forensic accounting. The Board finds that a forensic accounting is not “a financial statement of [the union’s] affairs” within the meaning of the *Code*. Accordingly, a union has no obligation thereunder to produce such a document to a member.

[29] The Board dismisses the complaint on the ground that the requested forensic accounting is not a financial statement within the scope of section 110 of the *Code*.

B. Secondary Issue—the Timing of the Request for Production of a Financial Statement

[30] As stated earlier, the complaint also raises a secondary issue, one related to the timing of Mr. Ford's initial letter to the union. He is seeking production of specific financial documents "from 2009 to date". The timing issue is one that has apparently not previously arisen before this Board or its predecessor.

[31] For the purpose of this aspect of the complaint, the Board notes specifically the words within section 110(1) that a union "shall,... provide... a copy of a financial statement of its affairs *to the end of the last fiscal year*". In the French language version of section 110(1), the corresponding words are: "fournir... une copie de leurs états financiers *à la date de clôture du dernier exercice*".

[32] As the Board understands those words, they set a limitation in time to the scope of production under section 110 of the *Code*. A member of a trade union is free, at any time, to request a copy of a financial statement, but the financial statement that the union is obliged to provide is only that for the current, or most recent, complete fiscal year. It is noted that Mr. Ford made his request to the union, for the first time, by letter dated November 6, 2012. At that time, the last (or most current) complete fiscal year of the union was the year 2011. Accordingly, at the time he made his written request to the union, the only financial statement the union was statutorily required to produce to him was that for the fiscal year 2011.

[33] As a general comment, nothing prevents a union from providing its members with a copy of a financial statement for previous fiscal years, if it wishes to, but nothing in section 110 of the *Code* requires it.

[34] The Board has previously found that the complainant's request for disclosure of a forensic accounting is beyond the scope of section 110 of the *Code*. In any event, the Board also finds that the part of his request, going back in time to 2009, is untimely. Section 110 of the *Code* limits the union's duty to provide a financial statement of its affairs "to the end of the last fiscal year". At the time Mr. Ford made his request to the union, the last fiscal year was 2011. Given the date on his request, had it been within the scope of section 110 of the *Code*, the union had no duty to provide him with a financial statement for fiscal year 2009 or 2010. Even if the Board

had found his complaint to be well founded (and the Board made no such finding), the Board would not have ordered the union to produce a copy of a financial statement for fiscal year 2009 or 2010.

VI. Conclusion

[35] For all of the above reasons, the complaint is dismissed.

[36] This is a unanimous decision of the Board, and it is signed on its behalf by

William G. McMurray
Vice-Chairperson

John Bowman
Member

André Lecavalier
Member